

US EPA RECORDS CENTER REGION 5



## THE DURIRON COMPANY, INC.

S E R V E S   T H E   P R O C E S S   I N D U S T R I E S

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REPLY TO BOX 8820  
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October 16, 1996

Ms. Cathleen R. Martwick  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. EPA  
Mail Code CM-29A  
77 West Jackson Blvd.  
Chicago, Illinois 60604

Re: The Powell Road Landfill  
Dayton, Ohio  
Duriron File No. R5050

Dear Ms. Martwick:

Pursuant to your correspondence of October 1, 1996 concerning the above referenced matter, please allow this to serve as Duriron's response. Although your letter did not provide any specifics as to the de minimis settlement proposal to be offered, Duriron is certainly interested in participating in future negotiations.

As you may or may not be aware, earlier this year Duriron participated with a group of over 40 de minimis PRP's which came together on its own to develop a de minimis proposal. Few (if any) of the de minimis parties with whom I spoke believe that the proposal compiled by Waste Management and Chrysler (using Peterson) was fair or consistent with what is happening at other sites. With this in mind, the group came together and used existing data to formulate a good faith alternative to the Waste Management/Chrysler proposal. Unfortunately it is my understanding from speaking with Messrs. Tim Hoffman and Chris Walker that USEPA did not like parts of the group's alternative proposal, however, it is also my understanding that certain parts of the Chrysler/Waste Management proposal were also unacceptable. With this in mind, Duriron is most interested in what middle ground USEPA chooses.

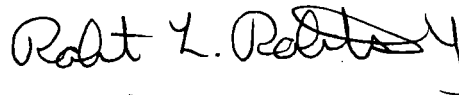
Ms. Cathleen M. Martwick  
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The only allegations against Duriron at this site involve disposal of non-hazardous plant refuse taken to the site selected by IWD (Waste Management) during the years 1982, 1983 and 1984. These allegations concern Duriron's Pump and Foundry Divisions, as well as the division which did business as Modern Industrial Plastics (MIP). The total volume from all entities is still less than 5,500 cubic yards. Using USEPA's estimated 2.6 million cubic yards as the total volume at the site. This places Duriron's volumetric share at less than one quarter of one percent. There are absolutely no allegations that Duriron nor any of its subsidiaries and/or divisions took any additional materials to this site, nor that any of the materials taken were in any way hazardous.

With the above in mind, although Duriron is more than willing to pay its "fair" share for the site, it is not willing to allow the major PRPs to shift the burden from themselves onto de minimis parties like Duriron. We had previously made this clear in the attached letter to Mr. Kohl, but never received any response. We realize that CERCLA/Superfund is never totally "fair", but the goal of a rough justice allocation should be to arrive at an allocation which is as fair as possible to all parties based on the data available. I trust that USEPA will review both proposals and ultimately make an offer which meets the rough justice test.

As an aside, I have requested on several occasions that you direct any and all correspondence to Duriron, Modern Industrial Plastics and/or MIP to my attention at the address shown above. These parties are represented by Counsel, and any additional contact directly with the units will only serve to slow the process. I will await your contact and offer of participation.

Sincerely,



Robert L. Roberts, Jr.  
Associate Counsel

RLR/kss  
Attachment



## THE DURIRON COMPANY, INC.

S E R V E S   T H E   P R O C E S S   I N D U S T R I E S

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December 7, 1995

Mr. Steven C. Kohl  
Howard & Howard  
Pinehurst Office Center  
Suite 101  
1400 North Woodward Ave.  
Bloomfield Hills, Michigan 48304-2856

Re: Allocation Process at Powell Road Landfill  
Duriron File No. R5050

Dear Mr. Kohl:

During the November 16, 1995 Powell Road site allocation meeting, several parties (including Duriron) raised concerns over the methodology currently being used by Peterson Consulting to allocate between the generators. At your request, I agreed to outline Duriron's concerns, and have done so below. Municipalities are specifically excluded from this analysis, as are other types of PRPs (Owner/Operators and Transporters). Although I have used Duriron as an example, the analysis is applicable to all generators.

### I. BACKGROUND - SITE OPERATION

Based on previous Peterson documents such as the July 17, 1992 Executive Summary, the following facts are clear:

- The landfill began operation in 1959 when Frank Barger converted an old gravel pit. From 1959 to 1973 the facility had an identified core group of customers of which Chrysler was the largest. The site had no restrictions, and is known to have accepted wastes which would be classified as hazardous if disposed of today. No quantitative documentation is available for this 14 year period.
- In 1973, the site was purchased by LSI. Although the percentage of municipal wastes may have gone down somewhat, the landfill was operated in much the same manner as before. Wastes included those which would be considered hazardous if disposed of today. Quantitative documentation is available for 4 of the 5 years LSI operated the site.
- In 1978, LSI was purchased by SCA. Landfill operations continued as before, and wastes which would be considered hazardous if disposed of today were taken to the site (at least during 1978, 1979 and part of 1980). Quantitative documentation is available for 6 of the 7 years SCA operated the site. Note: Regulations promulgated to enforce disposal requirements under RCRA became effective in November of 1980, and absent evidence to the contrary, it must be presumed that wastes which would be considered hazardous if disposed of today were no longer being taken to the site.

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- The Powell Road Landfill ceased accepting wastes in August of 1984 and was purchased by WMI as part of a much larger transaction in October of 1984.

## II. ALLEGATIONS AGAINST DURIRON

Duriron's alleged involvement at the site is limited to allegations that IWD took 5488.29 cubic yards of Duriron waste to the site during 1982, 1983 and 1984. All alleged Duriron wastes at Powell Road were generated post RCRA regulations, and no allegations have been made that any Duriron waste was other than typical nonhazardous plant refuse.

Please note that I have included "Modern Industrial Plastics" and "MIP" in Duriron's alleged allocation since these were both names for a Duriron operating unit at the time. Although the name and assets of the unit were later sold, Duriron was (and is) the legal entity responsible for operations at MIP at the time. MIP was simply a dba for the location, and both USEPA and Peterson have been advised of this.

## III. PETERSON'S EXISTING ANALYSIS (8/16/95)

Under Peterson's August 16, 1995 settlement allocation, liability was broken down into three principal types. Each is briefly described below:

- Volumetric Share (60%) - A generator's Volumetric Share is based on its percentage of waste at the site during the 10 of 26 years where quantitative information is available. Simply put, each generator's alleged volume was divided by the total "viable generator" volume identified at the site (approximately 404,000 cubic yards). The effects of "eliminated" PRPs can be best seen here since well over 1,000,000 cubic yards are documented to have gone to the site during this period.
- Undocumented Share (20%) - A generator's Undocumented Share is based on its existence only from 1959 through 1973. "Credits" were given for use of alternative landfills, but were given across the board as part of a weighing system. In other words, two companies which were both in existence during the entire period were treated exactly the same. Even though one may have used alternative landfills while the other did not, credits go to both equally by weighing the time periods.
- Qualitative Share (20%) - A generator's Qualitative Share is based on a point system, with points being given for receiving a §104(e) request (1 point), being "linked" to the site (1 point), generating hazardous materials (2 points) and actually disposing of hazardous materials at the site (4 points).

## IV. APPLYING PETERSON'S ANALYSIS TO DURIRON

Applying Peterson's analysis to the allegations made against Duriron points out what we believe to be a clearly inequitable result.

- Duriron's Volumetric Share would be calculated by dividing 5488.29 YD<sup>3</sup> by 403,734 YD<sup>3</sup>, yielding 1.36%. The 1.36% would then be weighed at 60% of the total even though only 10 of 26 years (38%) are represented. Similarly, no credit is given here for post-RCRA wastes.



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- Duriron's Undocumented Share would be calculated the same as any other long term Dayton company regardless of the fact that absolutely no allegations have been made that Duriron wastes were taken to the site at any time other than 1982, 1983 and 1984. More specifically, 5488.29 YD<sup>3</sup> is multiplied by 70% to get 3841.80 YD<sup>3</sup>. This number is then divided by 191,152 YD<sup>3</sup> to get Duriron's Undocumented Share of 2.01%. As unreasonable as it is, Duriron's "Undocumented Share" is actually higher than its Volumetric Share, even though it didn't use the site during the periods in question. The 2.01% would then be weighed at 20%.
- Duriron's Qualitative Share would be based strictly on the fact that it received a §104(e) request from the USEPA. Considering that these requests are simply letters sent to possible PRPs requesting information, they really have no relevance or significance to the allocation process. You are either a PRP or not, and that is based on past waste disposal activities, not whether USEPA sent you a letter. Duriron's actual share here would be calculated by multiplying 5488.29 YD<sup>3</sup> by 1, then dividing by 2,239,945 YD<sup>3</sup> to yield 0.25%. The 0.25% would then be weighed at 20%.

## V. ANALYSIS AND SUGGESTIONS

Although numerous different allocation models are available which I believe would yield more "fair" results than the existing Peterson draft, I will limit my comments to modifications using Peterson's model as the core. I believe that it can be modified to yield results which are as "fair" as CERCLA ever is.

- First, I would reduce the weight of the Volumetric Share to 40%. This is more representative of the period actually covered (10 of 26 years). Although an argument can be made that the waste volumes went up dramatically during the last 7 years the landfill was operated, the highest 4 of those years (1981-1984) were post-RCRA regulation. It can, therefore be presumed that the hazardous nature of the waste went down dramatically more than offsetting the increased volume. If this type of set-off is not acceptable, and the majority of PRPs want to leave the Volumetric Share at 60%, then I would suggest that at a minimum, credit be given to generators for wastes taken to the site after November, 1980. This could be done by reducing the volumes of those wastes by 50% to differentiate between pre- RCRA and post-RCRA wastes.
- Second, the Undocumented Share should be combined with the Qualitative Share and based solely on qualitative evidence placing generators at the site. Evidence such as the Orion Report and subsequent driver interviews would form the basis for this share, and would result in the extrapolation of a generator's annual average waste volume back as far as 1959 depending on the information available. Individual PRPs would then be able to contest the extrapolation if they could show that the information was in some material way incorrect. This share should be weighed approximately the same as the volumetric share.
- Last, a new category should be added (Hazard Ranking Share) which would be based on available information concerning the hazardous nature of each generator's waste. This would essentially be the fourth point in Peterson's Qualitative Share, and should be ranked at no more than 20% since the only information available is questionable (at best) for all but a few generators.



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Duriron wastes were taken to the Powell Road landfill for only three years (1982-1984). The total volume of Duriron wastes taken to the site was only a little more than 5,000 cubic yards, out of a total volume of in excess of 1,000,000 cubic yards. All of the Duriron waste was nonhazardous plant refuse. As such, Duriron views itself as a de minimis generator at the site. Nonetheless, Duriron might be willing to participate in an allocation scheme, along the lines proposed by Peterson, if it is made more reasonable.

The intent of the above proposed changes is to balance quantitative and qualitative information in a manner which is more "fair" to all those concerned. It must be understood that many PRPs have been identified at more than one site in the Dayton area, and will only participate if we avoid the perception of double or even triple billing for the same waste. I offer these suggestions for consideration, and believe that they may boost participation and avoid unnecessary litigation. After you have had an opportunity to review these suggestions, please give me a call to discuss them.

Sincerely,

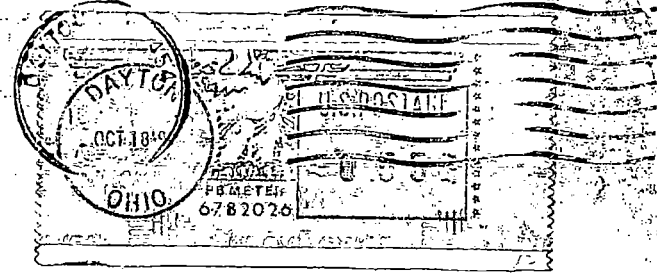
Robert L. Roberts, Jr.  
Associate Counsel

RLR/kss

cc: Robert E. Leininger (WMI)  
Patric J. McGrath (Peterson)



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